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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules to Establish New)
Personal Communications Services)

GEN Docket No. 90-314

To: The Commission

**REPLY TO ACT'S OPPOSITION TO OMNIPPOINT'S MOTION TO STRIKE AND
OPPOSITION TO ACT'S MOTION FOR ACCEPTANCE OF PETITION FOR
RECONSIDERATION NOTWITHSTANDING ITS LENGTH**

Out of an abundance of caution, because the Commission has not yet acted on our March 31, 1994 Motion to Strike (the "Motion"), Omnipoint Communications, Inc. ("Omnipoint") filed today, under separate cover, a substantive opposition to the March 7, 1994 Petition for Reconsideration (the "Petition") of Advanced Cordless Technologies, Inc. ("ACT"). Our opposition paints ACT's Petition for what it is -- a dissembling, inaccurate, illogical piece, long on hyperbole, but lacking in factual or legal support, and improperly filed in this proceeding. Nonetheless, Omnipoint feels it must also reply to ACT's April 11, 1994 opposition to the Motion and ACT's simultaneously-filed "Motion For Acceptance" of its Petition. We will be brief.

In its Motion, Omnipoint argued that the ACT Petition exceeded the Commission's established page limit and that ACT did not seek leave from the Commission to do so.

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The Commission's rules plainly state that petitions for reconsideration of rulemaking orders "shall not exceed 25 double-spaced pages." 47 C.F.R. §1.429(d). The text of the ACT Petition is 29 pages. ACT has not requested a waiver of the Commission's length of pleadings rules, as required by 47 C.F.R. §1.48(b). Under these circumstances, the ACT Petition must be "returned without consideration." 47 C.F.R. §1.48(a).

Motion at 1. Now, ACT's only belated excuse for having violated the Commission's 25-page limit is that the Petition

was filed under heavy time pressure due to the press of that and other business, and in the process we ran over the limit without making adjustments that would have complied with the Commission's rules. We apologize for that.

ACT's Opposition to Omnipoint's Motion to Strike at 1. Of course, despite this "heavy time pressure" and "the press of . . . business," ACT was apparently able to research and write a 29-page pleading. While we are sure that ACT's apology is heartfelt, the rule requiring a timely waiver request is clear and, even if ACT had filed one, the Commission does not routinely grant them. *See, e.g.*, 47 C.F.R. §1.48(b).¹

More to the point, however, the filing of ACT's new, 22-page version of its Petition is untimely, as it is beyond the Commission's 30-day deadline for filing petitions for reconsideration. *See* 47 C.F.R. §1.429(d). Because the 30-day deadline is statutory, *see* 47 U.S.C. 405, the Commission must dismiss ACT's Petition as untimely filed. We note that this is

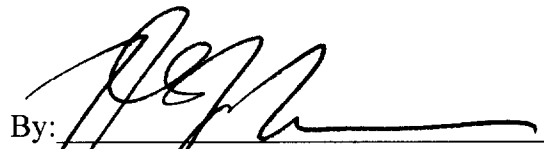
¹We note that one test the Commission has used to determine the propriety of a waiver is whether the proponent has demonstrated " 'unusual or compelling circumstances' or that the tardiness was attributable to circumstances completely beyond its control." *See, e.g., Kennebec Valley Television, Inc.*, 3 FCC Rcd. 4522, 4524 (1988). Of course, here, ACT has shown neither.

not the first time ACT has found itself in this situation in this proceeding. *See Memorandum Opinion and Order*, GEN Docket No. 90-314, FCC 94-30, released March 4, 1994 at ¶ 56.

Thus, since (1) ACT's original Petition must be "returned without consideration" because it exceeded the Commission's 25-page limit and ACT sought no timely waiver of that rule and (2) ACT's late-filed, revised Petition must be dismissed because, while it was filed with a waiver request, the Commission cannot waive a statutory filing deadline, Omnipoint's Motion should be granted.

Respectfully submitted,

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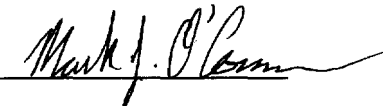
Its Attorneys

Date: April 21, 1994

CERTIFICATE OF SERVICE

I, Mark J. O'Connor, certify that on this day, April 21, 1994, a copy of the attached "REPLY TO ACT'S OPPOSITION TO OMNIPOINT'S MOTION TO STRIKE AND OPPOSITION TO ACT'S MOTION FOR ACCEPTANCE OF PETITION FOR RECONSIDERATION NOTWITHSTANDING ITS LENGTH" was sent via first-class mail, postage pre-paid, to the following party:

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